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March 14, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141**

Dear Ms. Dortch:

Pursuant to the *Protective Order* in the above-captioned proceeding,[1] Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc. hereby submit for filing a redacted, public version of the enclosed ex parte letter. The Highly Confidential version of the ex parte letter has been filed by hand with the Office of the Secretary and will be made available for review pursuant to the terms of the *Protective Order*.

Please contact me if you have any questions regarding this submission.

[1] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, 33 FCC Rcd. 5290 (2018) ("*Protective Order*").

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

Counsel for Granite Telecommunications, LLC Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc.

Enclosure

cc: Terri Natoli
Edward Krachmer
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VIA HAND DELIVERY AND ECFS ***EX PARTE***

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: ***Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141**

Dear Ms. Dortch:

Granite Telecommunications, LLC ("Granite"), Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications ("MetTel"), and Access One, Inc. ("Access One" and, together with Granite and MetTel, "the Joint Parties"), through their undersigned counsel, submit this letter in response to the December 28, 2018 letter of AT&T in the above-referenced proceeding.[1] As the Joint Parties and others have shown, the avoided-cost resale requirement in Section 251(c)(4), at least as it applies to TDM-based telephone service provided via copper loops ("traditional TDM service"), is both necessary to protect consumers and in the public interest. USTelecom has not met its burden of proof to demonstrate that the public in general and competition in particular will be advantaged by forbearance from that requirement,[2] and the AT&T Letter provides no basis for the Commission to conclude otherwise.

The traditional market power test is the appropriate analytical framework here. AT&T attempts, again, to explain away the inadequacy of the information and data supplied in the Petition by asserting that the Commission need not analyze the relevant geographic and product markets for traditional TDM service. But the Joint Parties and other opponents of the Petition have conclusively established that those arguments are baseless. To begin with, AT&T's argument that Commission precedent does not support a granular analysis of the relevant markets in its assessment of the Petition

[1] Letter from James Young, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141 (filed Dec. 28, 2018) ("AT&T Letter").

[2] *See* Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018) ("Petition").

is without merit.[3] As the Joint Parties have explained, multiple Commission orders make clear that the traditional market power test, which requires definition of the relevant geographic and product markets and analysis of the levels of competition therein, is the appropriate analytical framework where the petitioner relies on the level of competition to justify forbearance from economic regulation applied to legacy services.[4]

No doubt recognizing that an assessment of market power would prove that forbearance should be denied, AT&T tries to avoid application of such an analysis by arguing that the policy of promoting broadband deployment codified in Section 706 mandates nationwide forbearance.[5] To be clear, nationwide forbearance would impose significant costs on customers where the ILECs possess substantial and persisting market power. The Joint Parties and others have documented these effects at length in this proceeding in the market for traditional TDM service.[6]

Fortunately, relevant Commission precedent provides no basis for ignoring conditions in specific relevant markets. The orders that AT&T cites to support nationwide forbearance do not involve forbearance from the core local competition provisions of the 1996 Telecommunications Act. As the Joint Parties have explained, the Commission created separate analytical frameworks for petitions, one involving "advanced services, like broadband services" where the traditional market power test does not apply and one involving "legacy facilities" where the traditional market power test does apply.[7] The Petition, especially as it relates to traditional TDM service, falls squarely within the

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[3] *See* Letter from Thomas Jones, Counsel for Granite, MetTel, and Access One, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 6-13 (Nov. 8, 2018) ("Joint Parties Letter"); Reply Comments of AT&T, WC Docket No. 18-141, at 10-12 (Sept. 5, 2018) ("AT&T Reply Comments"); *see also* Reply Comments of CenturyLink, WC Docket No. 18-141, at 6-14 (Sept. 5, 2018) ("CenturyLink Reply Comments"); Reply Comments of USTelecom – The Broadband Association, WC Docket No. 18-141, at 15-26 (Sept. 5, 2018) ("USTelecom Reply Comments"); Reply Comments of Verizon, WC Docket No. 18-141, at 20-27 (Sept. 5, 2018) ("Verizon Reply Comments").

[4] *See* Joint Parties Letter at 6.

[5] *See* AT&T Letter at 5-6.

[6] *See, e.g.*, Opposition of Granite to US Telecom's Forbearance Petition, WC Docket No. 18-141, at 15-35 (Aug. 6, 2018) ("Granite Opp."); Joint Parties Letter at 1-5, 15-24; Opposition of MetTel, WC Docket No. 18-141, at 4-7 (Aug. 6, 2018) ("MetTel Opp."); Opposition of U.S. TelePacific Corp., Mpower Communications Corp., and Arrival Communications, Inc., WC Docket No. 18-141, at 14-16 (Aug. 6, 2018) ("TPx Opp.").

[7] *See, e.g.*, Granite Opp. at 14 (quoting *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, Memorandum Opinion and

latter category. Accordingly, Section 706's directive that the Commission seek to promote broadband deployment through forbearance provides no basis for a nationwide forbearance analysis here, as AT&T and other ILECs have conceded elsewhere.[8] The Commission therefore should analyze the Petition employing the framework set forth in the *Qwest Phoenix Forbearance Order*, the most recent application of the traditional market power analysis in the context of a request for forbearance from economic regulation of legacy services.[9]

As industry experts and economists have demonstrated at length on behalf of the Joint Parties and others, eliminating avoided-cost resale will likely harm competition in the provision of traditional TDM service, and, as a result, customers that demand that service will experience higher prices, fewer competitive options, and lower quality of service.[10] USTelecom has offered rhetoric but no information or data to counter this evidence. There is, therefore, simply no factual basis for concluding that the standard for forbearance from the avoided-cost resale requirement has been met.

Granting forbearance from the avoided-cost resale requirement would likely result in reversal on appeal, as was the case last month with the Commission's decision to eliminate the enhanced Lifeline subsidy for resellers in Tribal lands.[11] The D.C. Circuit vacated that decision because, among other things, the Commission (1) failed to consider that eliminating reseller eligibility would cause consumers in Tribal lands to lose access to affordable service, and (2) cited to no evidence that eliminating reseller eligibility would incentivize facilities-based providers to invest in facilities or

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Order, 25 FCC Rcd. 8622, ¶ 39 (2010) ("*Qwest Phoenix Forbearance Order*"), *aff'd by Qwest Corp. v. FCC*, 689 F.3d 1214 (10th Cir. 2012)).

[8] *See, e.g.*, Comments of AT&T Services, Inc., WC Docket No. 14-9, at 4 (July 7, 2014) (explaining that petitions concerning "legacy TDM-based services" are different from petitions that "implicate the broadband deployment goals articulated in section 706 of the Act"); *see also* Joint Parties Letter at 7-8.

[9] *See, e.g.*, Granite Opp. at 3-5, 11-14; MetTel Opp. at 3; INCOMPAS Motion for Summary Denial, WC Docket No. 18-141, at 4 (Aug, 6, 2018); TPx Opp. at 11; Opposition of Access Point Inc., BullsEye Telecom, Inc., Matrix Telecom, LLC dba Impact Telecom, New Horizon Communications Corp., and Xchange Telecom LLC, WC Docket No. 18-141, at 7-12 (Aug. 6, 2018); Opposition of Sonic Telecom, LLC to Petition for Forbearance of USTelecom, WC Docket No. 18-141, at 12-13 (Aug. 6, 2018); Opposition of First Communications, LLC, WC Docket No. 18-141, at 7-12 (Aug. 6, 2018).

[10] *See, e.g.*, Declaration of William P. Zarakas ¶¶ 21-28 (Aug. 6, 2018), attached as Attachment B to Granite Opp. ("Zarakas Decl."); Declaration of Larry Antonellis ¶¶ 41-44 (Aug. 6, 2018), attached as Attachment A to Granite Opp. ("Antonellis Decl."); Declaration of Sean J. Sullivan ¶¶ 31-33, attached to MetTel Opp. ("Sullivan Decl.").

[11] *See Nat'l Lifeline Ass'n v. FCC*, 915 F.3d 19 (D.C. Cir. 2019).

introduce new service plans.[12] While the legal contexts of avoided-cost resale and reseller eligibility for Tribal lands subsidies of course differ, the failure to account for record evidence undermining the basis for a Commission decision to change the regulations governing resellers here would result in the same outcome as was the case in *National Lifeline*: reversal on appeal.

Traditional TDM service constitutes a separate relevant product market. Parroting USTelecom's flawed arguments, AT&T further asserts that traditional TDM service represents such a "small and shrinking portion of the marketplace" that the Commission need not recognize traditional TDM service as a distinct relevant product market.[13] And, in repeating the tired refrain that non-viable alternatives to traditional TDM service create competition in the "local voice marketplace,"[14] AT&T again cites the Petition, which inappropriately relies on competition in the provision of services to consumers, even though, as AT&T is well aware, the demands of business customers differ from those of consumers.[15] The Joint Parties and others have described at length the ways in which many such customers depend on traditional TDM service, and the characteristics specific to traditional TDM service, to perform mission-critical functions.[16] Importantly, these customers do not regard IP-based services as a substitute for traditional TDM-based service.[17] Moreover, the Joint Parties and other competitors are meeting the demand for traditional TDM service by combining the service with

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[12] *Id.* at 22-23 (finding that the Commission did not "point to evidence that banning resellers from the Tribal Lifeline program would promote network buildout[, . . . and] ignored that its decision is a fundamental change that adversely affects the access and affordability of service for residents of Tribal lands").

[13] *See* AT&T Letter at 6.

[14] *See, e.g.*, USTelecom Reply Comments at 23-26; AT&T Reply Comments at 23; CenturyLink Reply Comments at 7-8.

[15] *See* AT&T Letter at 7.

[16] *See, e.g.*, Zarakas Decl. ¶ 14 (observing that many business customers "are specifically seeking copper-based TDM service"); *see also* Granite Opp. at 16-21; Antonellis Decl. ¶¶ 9-27; MetTel Opp. at 4-6; Sullivan Decl. ¶¶ 11-21; Reply Comments of Granite in Support of Motion for Summary Denial and Opposition, WC Docket No. 18-41, at 9-10 (Sept. 5, 2018) ("Granite Reply Comments").

[17] *See* Granite Opp. at 16-21; Zarakas Decl. ¶ 14; Antonellis Decl. ¶ 12; Granite Reply Comments at 9-10; *see also* MetTel Opp. at 4-6. And, as previously explained, even in instances where Granite's customers *would* switch to an IP-based service offering, ILECs have rejected Granite's requests for access to replacement IP services. *See* Joint Parties Letter at 11-12.

innovative, value-added features, such as one-stop shop integrated billing and maintenance platforms that save customers time and money.[18]

The record of this proceeding is already replete with examples of business and government customers that depend on traditional TDM service and do not regard *any* other service as a viable replacement. For example, multiple state public utility commissions and public advocates have emphasized that public safety services frequently depend on the ubiquity and unmatched reliability of traditional TDM service.[19] As NASUCA explains, the aftermath of Superstorm Sandy illustrated "the precariousness for the public of not maintaining the copper infrastructure, at the very least for first responders, utilities, hospitals and government buildings."[20] For example, public utilities such as Atlantic City Electric lost VoIP and wireless service, which, in turn, delayed power restoration to its customers. In addition, NASUCA explains that, as a result of concerns over the reliability of substitute voice services, such as wireless "Voice Link," Verizon rebuilt copper wirelines to fire stations and other first responders.[21]

Severe weather events are occurring more frequently than ever before. As the U.S. government found in its November 2018 Fourth National Climate Change Assessment, "[r]ecent extreme events demonstrate the vulnerabilities of interconnected economic sectors to increasing risks from climate change," and "many extreme weather and climate-related events are expected to become more frequent and more intense in a warmer world."[22] These events will place key government facilities at risk. A January 2019 Department of Defense report on climate change impacts found that two-thirds of studied

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[18] *See, e.g.*, Joint Parties Letter at 3; Antonellis Decl. ¶ 5; Sullivan Decl. ¶ 5.

[19] *See* Letter from David Springe, Executive Director, NASUCA et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (Nov. 8, 2018) ("NASUCA Letter"); Comments of the California Public Utilities Commission, WC Docket No. 18-141, at 3-4 (Aug. 6, 2018) ("CPUC Comments"); Reply Comments of the California Public Utilities Commission, WC Docket No. 18-141, at 2-3 (Sept. 5, 2018) ("CPUC Reply Comments"); Comments of the Michigan Public Service Commission, WC Docket No. 18-141, at 3-5 (Aug. 6, 2018) ("MPSC Comments"); *see also* Comments of the Public Utilities Commission of Ohio, WC Docket No. 18-141, at 4 (Aug. 3, 2018); Reply Comments of the Pennsylvania Public Utility Commission, WC Docket No. 18-141, at 8 (Sept. 5, 2018).

[20] *See* NASUCA Letter at 2-3 n.8.

[21] *Id.*; *see also* Comments of NASUCA et al., WC Docket No. 17-84, at 30-31 (June 15, 2017) ("June 2017 NASUCA et al. Comments"); Declaration of Susan M. Baldwin, ¶¶ 64-69, attached to June 2017 NASUCA et al. Comments.

[22] U.S. Global Change Research Program, *Fourth National Climate Assessment*, at 47 (Nov. 2018), https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.

military installations across the country "are vulnerable to current or future recurrent flooding . . . [and] [a]bout one-half are vulnerable to wildfires . . . [which] may then experience serious mudslides or erosion when rains follow fires."[23] Recognizing the increasing prevalence of severe weather events, the Michigan Public Service Commission ("MPSC") explained that it

> does not support VoIP being considered equal to traditional wireline service for technical and regulatory reasons. VoIP will not work during a power outage, but a traditional landline receives its power from the central office and will continue to function. This can be an especially relevant difference in the case of natural disasters like hurricanes and tornadoes when a landline may be the only way to contact emergency services.[24]

The California Public Utilities Commission ("CPUC") has expressed similar concerns about the impact of forbearance on emergency service networks.[25] As the CPUC explains, "[w]e are concerned that, in the absence of any evidence or analysis, the Commission might take an action that materially harms emergency service."[26]

ILECs themselves market the reliability benefits of traditional TDM service.[27] And it is because of this reliability that many federal and state regulations require, as a practical matter, the

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[23] Office of the Under Secretary of Defense for Acquisition & Sustainment, *Report on Effects of a Changing Climate to the Department of Defense*, at 16 (Jan. 2019), https://partner-mco-archive.s3.amazonaws.com/client_files/1547826612.pdf.

[24] MPSC Comments at 4.

[25] CPUC Comments at 3-4; CPUC Reply Comments at 2-3.

[26] CPUC Reply Comments at 2.

[27] *See, e.g.*, *Why You Need a Home Phone*, Frontier, https://go.frontier.com/phone ("A Frontier land line is more reliable in a power outage than a cellular phone, which is ideal in emergency situations. While a mobile phone will need outlet power to stay charged, a traditional phone receiver is powered through buried landlines which have been reinforced to withstand natural disasters."); *CenturyLink Home Phone*, CenturyLink, https://www.centurylinkquote.com/home-phone ("There are many little-known benefits to having a landline phone service from CenturyLink. For instance, did you know that if you have a home phone, it may still work even if the cell phone towers go out? And unlike with cell phones, you will rarely experience a dropped call on your end."); *Home Phone Service*, Consolidated Communications, https://www.consolidated.com/residential/phone/local-plans (touting "[r]eliable, high quality landline phone line [service] – stay in touch even during a power outage," while disclaiming that "Consolidated phone service that is provided over fiber, including 911, will not function in the event of a power outage," and noting that "it's the customer's responsibility to purchase, maintain, and replace any battery back-up power unit(s)"). The alarm industry employs similar disclaimers regarding the use of technologies other than traditional TDM. *See, e.g.*, *Security*

qualities, or, at least the redundancy, of traditional TDM service. For example, a Drug Enforcement Administration ("DEA") regulation, 21 C.F.R. § 1306.11, requires pharmacies to obtain a signed, written prescription, via paper or facsimile, from an authorized medical provider before dispensing a controlled substance. Although the DEA's rules have been amended to enable the electronic delivery of prescriptions,[28] Section 1306.11 specifically recognizes the role that facsimile transmission may play in prescription delivery.[29] As Granite has explained, the specific requirement that prescriptions may only be dispensed upon receipt of a writing from a practitioner highlights the importance of TDM redundancy for practitioners and pharmacies in the event of Internet service outages.[30]

But there is further evidence of the enduring importance of traditional TDM service to business and government customers. For example, a Federal Aviation Administration ("FAA") regulation, 14 C.F.R. § 171.311, requires that ground components of non-Federal Microwave Landing System facilities "operate on a single frequency assignment or channel, using time division multiplexing."[31] The rule covers both air traffic control and flight instruments[32] and demonstrates the importance of traditional TDM service to the reliability, safety, and security of everyday air travel. And, despite the FAA's ongoing efforts to develop a TDM-to-IP migration strategy,[33] by 2017, TDM still accounted for

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Services & Features FAQs, ADT, https://www.adt.com/help/faq/security-services-features ("Using VoIP for your home security communications could affect the reliability of your service, depending on which provider service you use. . . . ADT's ability to receive an alarm signal may be affected if there is a power outage at your home or if the VoIP/Digital phone service is temporarily unavailable due to scheduled or unscheduled network outages."); *see also* Bob Dolph, *Potential Dangers When Transitioning From POTS to IP*, Security Sales & Integration (July 25, 2017), https://www.securitysales.com/columns/dangers-transitioning-pots-ip/ (discussing "the technical dangers technicians are presently facing in the industry's transition from POTS to IP").

[28] *See* 21 C.F.R. § 1306.08(b).

[29] *See id*. § 1306.11.

[30] *See* Granite Opp. at 17-18; Antonellis Decl. ¶¶ 16-17.

[31] 14 C.F.R. § 171.311(a).

[32] *See id*. § 171.301 *et seq*. ("set[ting] forth minimum requirements for the approval, installation, operation and maintenance of non-Federal Microwave Landing System (MLS) facilities that provide the basis for instrument flight rules (IFR) and air traffic control procedures").

[33] *See, e.g.*, Federal Aviation Administration, *TDM-to-IP Migration*, White Paper (Oct. 27, 2015), https://www.faa.gov/air_traffic/technology/cinp/fens/documents/media/tdm-to-ip_migration_2015-10-27.pdf (discussing FAA actions to test the TDM-to-IP migration, along with the service performance,

"approximately 90 percent of the communications services used by [National Airspace System ('NAS')] operational systems" and "87 percent of the total [FAA telecommunications infrastructure] services."[34] The FAA indicated just last year that, although it continues to migrate services to IP, 88 percent of the more than 25,000 telecom services NAS relies on to "support[] safety-critical [air traffic control] operations"– from equipment monitoring and control to navigation to voice – are still TDM-based.[35]

The Federal Bureau of Investigation's ("FBI") Criminal Justice Information Services ("CJIS") Security Policy also recognizes the unique reliability and security that traditional TDM service affords. Under the CJIS Security Policy, which applies to "all entities with access to, or who operate in support of, FBI CJIS Division's services and information,"[36] the facsimile transmission of criminal justice information ("CJI"), defined as the "data necessary for law enforcement and civil agencies to perform their missions including, but not limited to biometric, identity history, biographic, property, and case/incident history data," is exempted from standard encryption requirements so long as the CJI is "transmitted via a single or multi-function device over a standard telephone line."[37] The CJIS Security Policy authorizes the use of IP-based services for the facsimile transmission of documents containing CJI, but only if encryption is employed.[38] As an appendix to the CJIS Security Policy observes, "there

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service avoidance/diversity, and information security challenges posed by the transition from TDM to IP).

[34] Federal Aviation Administration, *FAA Telecommunications Infrastructure 2 (FTI-2) Program Objectives*, White Paper, at 2 (Sept. 25, 2017), https://www.faa.gov/air_traffic/technology/cinp/fens/documents/media/fti-2_draft_sir_1_attachment_j-0_fti-2_program_objectives_white_paper.pdf.

[35] Federal Aviation Administration, *FAA Enterprise Network Services*, Industry Day Presentation, at 46 (Apr. 25, 2018), https://www.faa.gov/air_traffic/technology/cinp/fens/documents/media/FENS_Industry_Day_Morning_briefing_4_25_2018_FINAL.pdf.

[36] FBI, Criminal Justice Information Services (CJIS) Security Policy § 1.2 (Aug. 16, 2018), https://www.fbi.gov/file-repository/cjis-security-policy_v5-7_20180816.pdf.

[37] *Id*. §§ 4.1, 5.10.2; *see also id.* at Figure 14 (explaining that under Use Case 2 – "Faxing from a Single/Multi-function Device over a Traditional Telephone Line" – "[e]ncryption of a document containing CJI is not required because the document travels over a traditional telephone line," while transmission of a document containing CJI in Use Case 3 – "Faxing from a Multi-function Device over a Network" – requires encryption).

[38] *See id*. at § 5.10.1.4, Figure 14.

are more ways for intruders to attack a VoIP system than a conventional voice telephone system or PBX."[39]

AT&T is of course fully aware of the enduring importance of traditional TDM service for public safety and national security. In 2015 comments filed with the Departments of Commerce and Agriculture, AT&T's trade association USTelecom explained that "the [FAA's] National Airspace System uses TDM applications and services extensively to deliver those services." USTelecom observed that although "efforts are being made through the FAA's 'NextGen' Programs to upgrade the National Airspace System to communications interfaces based upon Internet Protocol (IP) standards, over 92 [percent] of . . . services continue to be TDM-based."[40] In those same comments, USTelecom quoted a statement by Department of Defense and Federal Executive Agencies ("DoD/FEA") that those agencies "continue to 'rely heavily on wireline TDM-based networks and services and will do so *for the foreseeable future*.'"[41] Given the cautious pace of the FAA's transition to IP-based services and DoD/FEA's projection of their need to rely on traditional TDM for the foreseeable future, there is no reason to conclude that those agencies, or the public interest, would be served by the abrupt elimination of the Section 251(c)(4) requirement, as proposed by USTelecom.

Furthermore, in the time since it filed the Petition, USTelecom has advocated for Commission intervention to support the provision of traditional TDM service.[42] USTelecom recently "urge[d] the Commission to reaffirm its commitment to basic voice communications for American consumers in high cost and extremely high cost areas" by subsidizing ILEC provision of traditional TDM service.[43]

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[39] *Id.* at App. G.2 at G-5 (describing "VoIP [r]isks, [t]hreats, and [v]ulnerabilities" – including, but not limited to, vulnerability to Address Resolution Protocol cache poisoning, Address Resolution Protocol floods, and Dynamic Host Configuration Protocol server insertion attacks (each of which can enable further attacks), as well as exploitable software flaws – and corresponding remediation proposals).

[40] Comments of United States Telecom Association to Departments of Commerce and Agriculture, Docket No. 1540414365-5365-01 at 12 (June 10, 2015).

[41] *Id.* (emphasis added) (quoting Comments of the Department of Defense and All Other Federal Executive Agencies, GN Docket No. 13-5, at 1 (July 8, 2013) ("DoD/FEA Comments")). In responding to a 2013 public notice from the FCC's Technology Transitions Policy Task Force, DoD/FEA requested that the Commission "carefully consider potential adverse consequences on public safety and national security interests as a result of requiring DoD/FEA to prematurely transition [from traditional TDM] to different technologies or services." DoD/FEA Comments at 1.

[42] *See* Letter from Michael Saperstein, USTelecom Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 9 (June 29, 2018).

[43] *Id.* In fact, USTelecom's arguments in WC Docket No. 10-90 align with the findings of Granite's economic expert, William Zarakas that business customers demand the features and functionalities of

This is not surprising, given that a 2018 AT&T-sponsored white paper analyzing business customers' reliance on TDM-based services found that "TDM remains prevalent in the enterprise as 92% of businesses surveyed said they use or pay for TDM service."[44] Moreover, the FCC's own data, which USTelecom misleadingly cites in the Petition to indicate a decrease in ILEC voice market share,[45] demonstrates that business and government users still rely on traditional TDM service for the significant majority of voice lines.[46] USTelecom's pursuit of high-cost support for basic voice service is flatly inconsistent with its advocacy here and undermines any argument that competition renders continued application of the avoided-cost resale requirement unnecessary.

It also bears emphasis that reliance on traditional TDM service in many areas of the country – including the high-cost areas mentioned above – is certain to continue for the foreseeable future.[47] For

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traditional TDM services; that it is uneconomic for CLECs to build out copper-based TDM service to individual MLB locations; and that alternatives to copper-based TDM service are unavailable for a large fraction of MLB locations. *See* Zarakas Decl. ¶¶ 14-19.

[44] Amy Lind, International Data Corporation, Enterprise Voice Transformation: Migration from TDM to IP, at 3 (Feb. 2018), https://www.business.att.com/content/dam/attbusiness/briefs/voice-and-collaborate-enterprise-voice-transformation-product-brief.pdf. The AT&T-sponsored report further observes that, even by 2022, 49 percent of business voice subscribers will still be using TDM-based voice service (alone or in combination with VoIP or wireless services), and 14 percent of business voice subscribers will still be using TDM-based voice service *only*. *See id.* at 9.

[45] As the record of this proceeding makes clear, the percentage of retail lines served is an inappropriate basis upon which to assess the level of competition in the provision traditional TDM service. *See, e.g.*, Opposition of INCOMPAS et al., WC Docket No. 18-141, at 5-6 (Aug. 6, 2018) ("Large providers, such as the ILECs (including their CLEC affiliates), cannot serve all customers well. . . . But smaller entities can use UNEs and avoided-cost resale to specialize in [] niches which may otherwise not receive top-level attention. . . . Competition for UNEs and resale, even if not a large share of the overall market, helps improve service to high-need, higher cost customers.").

[46] *See* Petition at 10. In December 2016, traditional TDM switched access lines accounted for approximately 60 percent (33.996 million out of a total of 56.88 million) of business and government voice lines. FCC, Industry Analysis & Technology Division, Voice Telephone Services: Status as of December 31, 2016, at 3 (Feb. 2018). In June 2017, traditional TDM switched access lines still accounted for approximately 57 percent (32.252 million out of a total of 56.599 million) of business and government voice lines. FCC, Industry Analysis & Technology Division, Voice Telephone Services: Status as of June 30, 2017, at 3 (Nov. 2018).

[47] *See, e.g.*, MPSC Comments at 3-4 ("[T]traditional wireline service may be the only reliable voice service available in [the Upper Peninsula and northern Lower Peninsula of Michigan]. With the UNE and resale obligations of Section 251 in place these areas are still open to competition and the benefits

instance, the Connect America Fund ("CAF") II auction will allocate $1.49 billion for the deployment of broadband to more than 700,000 locations across 45 states; however, those funds will be distributed over the course of 10 years.[48] And, as the Commission recently found, as of the end of 2017, nearly 20 million Americans still lacked access to fixed broadband connections (which are necessary for the provision of managed VoIP service).[49] Moreover, these CAF II and nationwide figures only represent a subset of *known* locations across the country where consumers and businesses lack access to broadband and therefore do not capture the substantial unknown areas without broadband. The Commission has acknowledged the need to refine the collection of Form 477 data,[50] on which it relies to assess broadband availability throughout the country, and many interested parties have highlighted the inherent imprecision of broadband availability assessments based on Form 477 data.[51]

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it brings. But if these offerings are not available to competitors at cost-based rates it is likely that these areas would have no competition at all due to the high barrier to entry.").

[48] Press Release, FCC, Connect America Auction to Expand Broadband to Over 700,000 Rural Homes and Businesses, at 1 (Aug. 28, 2018), https://docs.fcc.gov/public/attachments/DOC-353840A1.pdf.

[49] Press Release, FCC, Report: America's Digital Divide Narrows Substantially (Feb. 19, 2019), https://docs.fcc.gov/public/attachments/DOC-356271A1.pdf.

[50] *See Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking, 32 FCC Rcd. 6329, ¶¶ 5-7 (2017).

[51] *See, e.g.*, *An Update on Connecting Rural America: The 2018 Microsoft Airband Initiative*, Microsoft, at 9 (Dec. 3, 2018), https://blogs.microsoft.com/uploads/prod/sites/5/2018/12/MSFT-Airband_InteractivePDF_Final_12.3.18.pdf ("While the FCC reports that 92 percent of Americans have access to broadband, our data indicates that the number of people who *connect* to the internet at 25 Mbps is probably closer to 49 percent.") (emphasis added). *See also, e.g.*, Letter from C. Douglas Jarrett, Counsel for the National Rural Electric Cooperative Association, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-238, WC Docket No. 11-10, at 1 (Feb. 12, 2019) (discussing the "significant overstatements" and "false positives of fixed broadband availability attributable to recent Form 477 data"); Reply Comment of the Pennsylvania Public Utilities Commission, WC Docket No. 11-10, at 2-3 (Oct. 24, 2017) (agreeing with proposals by the CPUC and West Virginia Broadband Enhancement Council that "would greatly increase the accuracy of the deployment data"). Even USTelecom has been an active participant in the Commission's proceeding to address the shortcomings of the current broadband availability assessment methodology. *See, e.g.*, Letter from B. Lynn Follansbee, Vice President – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10 (Feb. 21, 2019); Letter from B. Lynn Follansbee, Vice President – Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10 (Oct. 17, 2018).

AT&T attempts to bolster CenturyLink's claim that the *Accelerating Broadband Deployment Order* somehow undermines the conclusion that traditional TDM service is a separate relevant market, but this, too, falls flat.[52] The Joint Parties have explained that, in adopting the "alternative options" test for discontinuance of legacy services, the Commission "barely acknowledged the needs of business customers, did not undertake a substitution analysis of any kind, and made no attempt to define a product market."[53] The Commission's decision not to define a relevant market made sense given the significant differences between the standard for discontinuance under Section 214, which is intended to ensure the availability of sufficient service after a discontinuance, and the Section 10 forbearance standard, which is intended to protect consumers from, among other things, the abuse of ILEC market power.[54] The Joint Parties' explanation of these differences does not constitute a "collateral attack" on the new discontinuance rule, as AT&T asserts. Rather, it simply demonstrates why the Commission should not view the service discontinuance test adopted in the *Accelerating Broadband Deployment Order* as relevant to the appropriate standard for analyzing the Petition. Finally, it is both true and irrelevant that "the retirement and discontinuance of copper services is well underway" and that the Commission's policy is to encourage the transition to IP-based services.[55] ILECs are free to file copper retirement and TDM service discontinuance applications pursuant to the procedures that the Commission deems appropriate. As long as traditional TDM service is offered, ILECs will have substantial and persisting market power in the provision of that service, and the Section 251(c)(4) avoided-cost resale requirement remains necessary.

Continued application of Section 251(c)(4) will promote competition. AT&T asserts that continued application of the avoided-cost resale requirement will somehow "retard the transition to broadband" and again claims that imagined "costs" of retaining the requirement will harm competition.[56] As just mentioned, retaining Section 251(c)(4) has no effect on ILECs' ability to discontinue legacy services, and, as the Joint Parties have previously explained, the costs of retaining Section 251(c)(4) are *de minimis* because the avoided-cost methodology allows ILECs to retain their expected profit margin for all aspects of the service that they are delivering and does not reduce

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[52] *See* AT&T Letter at 7-8 (citing *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, 33 FCC Rcd. 5660, ¶ 30 (June 8, 2018) ("*Accelerating Broadband Deployment Order*")).

[53] Joint Parties Letter at 14.

[54] *Id.*

[55] AT&T Letter at 8.

[56] *Id.* at 9.

ILECs' incentives to invest in new facilities and services.[57] Moreover, if AT&T actually believes that carriers and competition have been harmed by the avoided-cost resale rates set by state regulators in possession of "imperfect information," it is remarkable that AT&T has waited until this proceeding to complain about purported "significant costs."[58] The reality, illustrated by the record, is that *elimination* of the avoided-cost resale requirement would cause harm by providing ILECs with the incentive and ability to increase the wholesale prices they charge for traditional TDM service. As a result, competitors would have no choice but to reduce their service offerings or increase the prices they charge, to the detriment of competition and consumers.[59]

AT&T also claims, incorrectly, that competitors purchase a small amount of lines pursuant to Section 251(c)(4).[60] This fails to take into account evidence provided by the Joint Parties and others that competitors *do* purchase a large number of such lines.[61] And, as explained, many business and government customers rely heavily on traditional TDM service. Forbearance from Section 251(c)(4) will imperil those entities' ability to perform mission-critical business, public safety, and national security functions.

AT&T's further claim that "commercially negotiated UNE-P replacement services . . . are offered completely outside the Section 251 framework"[62] also is incorrect because the availability of statutorily required avoided-cost resale enables competitors to negotiate reasonable prices in commercial wholesale agreements.[63] AT&T completely ignores the fact that Section 252 contemplates that competitors will enter into negotiated agreements with ILECs that depart from the terms of Sections 251 and 252.[64] Thus, as the Joint Parties have explained, the backstop provided by Section

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[57] *See, e.g.*, Joint Parties Letter at 5; Zarakas Decl. ¶ 20; Granite Opp. at 35; Granite Reply Comments at 4 & n.8.

[58] *See* AT&T Letter at 9.

[59] *See* Joint Parties Letter at 4; Zarakas Decl. ¶ 21.

[60] *See* AT&T Letter at 8.

[61] *See, e.g.*, Granite Opp. at 25-26; Antonellis Decl. ¶¶ 10-11, 23-24, 40.

[62] AT&T letter at 2 n.5.

[63] *See, e.g.*, Granite Opp. at 26; Zarakas Decl. ¶¶ 22-23 & nn.12-13; Antonellis Decl. ¶ 37.

[64] Joint Parties Letter at 18.

251(c)(4) falls squarely within Congress's and the Commission's intended use of the avoided-cost resale requirement.[65]

Granite's description of its commercial negotiations with AT&T is accurate. As Granite has explained, the availability of avoided-cost resale was a crucial protection against AT&T's abuse of market power in setting the terms of the parties' commercial wholesale agreement. **[BEGIN HCI]**

[END HCI] AT&T's version of events is inaccurate.

[BEGIN HCI]

[65] *Id.*; *see also generally* 47 U.S.C. § 252.

[66] *See* Joint Parties Letter at 20-22.

[67] *See* AT&T Letter at 10.

[68] *Id*. at 11.

[69] *See id*.; *see also* Archived AT&T California Guidebook, Part 7, Section 5, Original and Revised Sheets 23-26, http://cpr.att.com/pdf/cahist/ca/0007-0005.pdf, attached hereto.

[70] Archived AT&T California Guidebook, Part 7, Section 5, Original Sheet 26, http://cpr.att.com/pdf/cahist/ca/0007-0005.pdf.

[END HCI]

For the reasons explained herein and in the Joint Parties' previous submissions in this proceeding, the Commission should promptly deny the Petition.

Please contact the undersigned with questions or concerns.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Mia Guizzetti Hayes
Samuel Eckland

Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc.

Attachment

[71] AT&T Letter at 10-11.

ATTACHMENT

6. THE BIG EASY PLAN

A. DESCRIPTION

The Big Easy Plan (Big Easy) is a business package that includes unlimited local calling and series completion hunting. Unlimited local calling provides unlimited directly dialed communications to Zone Usage Measurement (ZUM) Zones 1, 2 and 3 and non-ZUM (local) exchanges. ZUM and Hunting are defined in Guidebook, Part 4, Section 2

The Big Easy is available to business customers with individual measured rate business access line service (access line), described in Guidebook, Part 4, Section 2 under Measured Rate Service, who enter into a three-year written term agreement (contract) to maintain a minimum number of access lines state-wide and a minimum number of access lines per customer location[1].

The Big Easy will provide a fixed monthly rate for each access line equipped with the package. The rate will be dependent upon the minimum number of access lines committed to in the state and the minimum number of access lines committed to per location. There will also be a maximum number of lines per location. The customer has a choice of a minimum of either 700 access lines (Option A) or 50 access lines (Option B) as the state-wide minimum and a choice of 2 or 4 lines minimum per location. The minimum number of access lines per location is the same for all customer locations in the state. The maximum number of access lines per location is 20 (with a minimum state-wide commitment of 50 lines) or 40 (with a minimum state-wide commitment of 700 lines).

/1/ Location will be considered synonymous with Premises, as defined in Schedule Cal.P.U.C. No. A2.1, Definition of Terms.

6. THE BIG EASY PLAN (cont'd)

B. REGULATIONS

1. Additional access lines (lines) and billing telephone numbers may be added to the contract during the contract term. New lines and billing telephone numbers will be counted towards the state-wide minimum access line requirements.

2. In any given month, if the total number of access lines in the state falls below the selected state-wide minimum, a debit adjustment of $10.00 (ten dollars) per line for each line below the minimum, will be applied to the customer's designated master billing telephone number.

3. A minimum average of 2 lines per location must be maintained. Where the customer commits to a minimum of 4 lines per location, an annual line size assessment will be performed by the Company. Using the past 12 months of line size data, if the average number of lines per location falls below 4 lines, the customer will be converted to the 2 line minimum pricing schedule. If the customer falls below an average of 2 lines per location, the contract will be voided and the customer will go to standard Guidebook pricing[1]. Termination charges will not apply.

4. The customer may move or disconnect entire locations without incurring termination charges as long as the minimum number of lines in the state is maintained.

5. Upon expiration of the service agreement, the service will be automatically billed at the standard Guidebook rates[1] in effect at the time the service agreement expires, (as set forth in Guidebook, Part 4, Section 2) unless a new service agreement is negotiated prior to the expiration of the original agreement.

6. Customers not subscribing to eligible classes of service (per Guidebook, Part 4, Section 2) who wish to add The Big Easy Plan will need to first convert to the eligible class of service before subscribing to The Big Easy. Any charges to make the necessary changes will be billed in accordance with the Guidebook rates for such changes.

7. Call detail will not be provided to the customer on Zone 1 and Zone 2 calls.

8. The Big Easy Plan may not be furnished to any individual business access line measured rate service that is interconnected physically, acoustically or by any other means to any other line, facility or service at the customer's premises to extend a two-point connection beyond the originating station and the called station location.

9. The premises of a customer is that shown in Schedule Cal.P.U.C. No. A2.1, Premises. In the event the premises is located in more than one exchange, the premises will be considered as in the exchange in which the primary service is located.

/1/ See Guidebook, Part 4, Section 2.

6. THE BIG EASY PLAN (cont'd)

C. LIMITATIONS

1. Toll restricted access lines are not eligible for Big Easy.

2. Big Easy is not available on Toll Free or private line services. (C)

3. Customers subscribing to another local usage optional calling plans or service that includes Zones 1, 2 and 3 or local calls are ineligible for The Big Easy.

D. TERMINATION LIABILITY

Customers requesting the termination of a service agreement prior to the expiration date of the term will be assessed termination charges equal to 50% of the monthly payments remaining on the term period for each business access line committed. Payment of the termination charges does not release the customer from other amounts previously or currently owed to the Company.

Exception:

Termination liability will not apply if a customer upgrades to another service provided by the Company under a service agreement that meets the following requirements:

- The term period is equal to or greater than the term period remaining on the service agreement being terminated, and

- The volume commitment [minimum line volume state-wide (50 or 700 lines)] is equal to or greater than the minimum line commitment of the service agreement being terminated.

6. THE BIG EASY PLAN (cont'd)

E. RATES AND CHARGES[1]

Option A

State-Wide Minimum Access Line Commitment	Minimum Location[2] Commitment	Maximum Location[2] Allowance	Monthly Recurring Rate per line (unlimited local usage and hunting)	Non-Recurring Charge
700 lines	2 lines	40 lines	$18.90	$0
700 lines	4 lines	40 lines	$16.90	$0

Option B

State-Wide Minimum Access Line Commitment	Minimum Location[2] Commitment	Maximum Location[2] Allowance	Monthly Recurring Rate per line (unlimited local usage and hunting)	Non-Recurring Charge
50 lines	2 lines	20 lines	$22.40	$0
50 lines	4 lines	20 lines	$20.40	$0